

FILED
U.S. DISTRICT COURT
DISTRICT OF WYOMING
2015 OCT 30 PM 4 35
STEPHAN HARRIS, CLERK
CASPER

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

BPI LABS, INC., a Wyoming
corporation,

Plaintiff,

vs.

EAST HILL INDUSTRIES, INC., a
Texas corporation,

Defendant.

Case No. 15 cv 196 -J

COMPLAINT

COMES NOW Plaintiff, BPI Labs, Inc., a Wyoming corporation, by and through its undersigned counsel, and for its Complaint against Defendant, East Hill Industries, Inc., a Texas corporation, states and alleges as follows:

Receipt # CAS001551
Summons: 1 issued
not issued

PARTIES, JURISDICTION AND VENUE

1. BPI Labs, Inc. is a Wyoming corporation with its principal place of business in Evanston, Wyoming.

2. East Hill Industries, Inc. is a Texas corporation, with its principal place of business in Richardson, Texas.

3. This Court has jurisdiction over this civil action pursuant to 28 U.S.C. § 1332(a)(1) because the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) in that a substantial part of the events giving rise to this claim occurred in Wyoming.

FACTS COMMON TO ALL CLAIMS

5. Plaintiff incorporates by reference all preceding paragraphs.

6. BPI Labs, Inc. ("BPI") manufactures personal and consumer products for the health and beauty industry.

7. East Hill Industries, Inc. ("East Hill") provides a broad spectrum of packaging and manufacturing services and solutions; specifically, it sells cosmetic tubes to personal care product manufacturers such as BPI.

8. On or about December 5, 2014, BPI entered into a contract with East Hill in the state of Wyoming to provide approximately 220,000 two-ounce cosmetic tubes. The tubes were duly shipped to Evanston, Wyoming.

Pursuant to a contract with Jamberry Nails, in American Fork, Utah, these tubes were to be filled by BPI with foot lotion and foot scrub formulas and shipped to Jamberry Nails ("Jamberry") for further resale to Jamberry's customers.

9. After substantially all of these tubes had been filled with product and approximately one-half of the filled tubes (approximately 110,000 units) had been shipped to Jamberry, it was discovered that the tubes were becoming unsealed. Further investigation revealed that a high percentage of the tubes had similar defects; they could not be effectively sealed using customary and usual techniques.

10. Because the integrity of the tubes was compromised, BPI immediately contacted Jamberry and recalled the order. BPI was required to credit Jamberry \$154,586 --- the amount BPI had billed Jamberry for the order.

11. Because of the defective tubes, the foot lotion and foot scrub compounds inside the tubes were compromised and damaged such that the product was no longer usable and could not be reused.

12. BPI incurred further expenses for the costs of shipping the defective tubes and product to Jamberry and paying for the return shipping from Jamberry back to BPI upon discovery of the defect. BPI incurred damages in the amount of \$14,700 in lab fees to determine the reason the tubes were defective.

13. BPI promptly notified East Hill of the defective tubes and demanded compensation for damages it had incurred. East Hill has ignored those demands and otherwise ignored the problem.

COUNT I
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

14. Plaintiff incorporates by reference all preceding paragraphs.

15. The cosmetic tubes which East Hill sold to BPI were defective and unfit for the ordinary purposes for which such goods are used, in that they could not be sealed with integrity.

16. Such defects in the tubes rendered them unmerchantable and breached the implied warranty of merchantability which was part of the sale contract between BPI and East Hill.

17. Because of the breach of the implied warranty of merchantability, set forth above, BPI has suffered damages which it is entitled to recover from East Hill, together with the costs of purchasing the defective tubes from East Hill.

COUNT II
BREACH OF THE WARRANTY OF FITNESS
FOR AN INTENDED PURPOSE

18. Plaintiff incorporates by reference the preceding paragraphs.

19. East Hill was well aware of the intended use of the cosmetic tubes it was selling to BPI --- to contain cosmetic products for resale distribution. BPI relied upon East Hill's judgment to select and furnish suitable goods.

20. The cosmetic tubes East Hill sold to BPI were unfit for their intended purpose.

21. East Hill breached its implied warranty of fitness for a particular purpose, which was part of the contract between the parties; such breach has caused damages to BPI, which BPI is entitled to recover, together with the costs of purchasing the defective tubes from East Hill.

COUNT III
STRICT LIABILITY

22. Plaintiff incorporates by reference the preceding paragraphs.

23. Because the cosmetic tubes were defective and could not be effectively sealed, they were in a defective and unreasonably dangerous condition at the time they were sold.

24. Such defects in the cosmetic tubes damaged the foot lotion and foot scrub that BPI had placed in the tubes and sealed.

25. BPI is entitled to recover damages for the injury to and loss of its product.

WHEREFORE, BPI demands judgment against East Hill for the damages and losses it has incurred as a result of the defective cosmetic tubes that East Hill sold to it, its costs of suit, and such other and further relief as to the Court may seem just and equitable.

DATED this 30 day of October, 2015.



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